

**IN THE COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

**ORDER AMENDING RULE 11
OF THE COURT OF COMMON PLEAS
RULES OF CIVIL PROCEDURE**

This 20th day of November, 2008, IT IS ORDERED that:

- 1) Court of Common Pleas Civil Rule 11 is amended by deleting the material in brackets and including the material underlined, as follows:

Rule 11. Signing of Pleadings, Motions, and Other Papers: Representations to Court, Sanctions.

(a) *Signature.* Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record or bear the electronic signature in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party or bear the electronic signature of the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by statute or rule, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless it is corrected promptly after the omission of the signature is called to the attention of the attorney or party. If a pleading, motion or other paper is not signed it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(b) *Representations to Court.* By representing to the Court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument, for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) the allegations and other factual contentions have evidentiary support, or if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) *Sanctions*. If, after notice, and a reasonable opportunity to respond, the Court determines that subdivision (b) has been violated, the Court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) *How Initiated*. (A) *By Motion*. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the Court unless, within 21 days after the service of the motion (or such other period as the Court may prescribe), the challenged paper, claim, defense, contention, allegation or denial is not withdrawn or appropriately corrected. If warranted, the Court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) *On Court's Initiative*. On its own initiative, the Court may enter an order describing a specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) *Nature of Sanction: Limitations*. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of or include, directives of a nonmonetary nature, an order to pay a penalty into Court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the Court's initiative unless the Court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party, which is, or whose attorneys are, to be sanctioned.

(3) *Order*. When imposing sanctions, the Court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) *Inapplicability to Discovery*. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

- 2) This amendment is effective February 16, 2009.

Chief Judge

Judge

Judge

Judge

Judge

Judge

Judge

Judge

Judge